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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 STEPHEN R. DUNHAM,

12 Plaintiff,

13 vs.

14 AMERICAN HOME MORTGAGE
SERVICING, INC.,

15 Defendant.

CASE NO. 11cv2642-LAB (BGS)

**ORDER GRANTING MOTION TO
DISMISS**

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17 On November 14, 2011, Defendant American Home Mortgage Servicing, Inc.
18 ("AHMSI") removed this action from state court. Then on November 18, AHMSI moved to
19 dismiss for failure to state a claim, arguing that the complaint's claims, though based on
20 federal law, were too vaguely pleaded to state a claim or comply with Fed. R. Civ. P. 8.

21 The hearing on this motion was set for January 30. Under Civil Local Rule 7.1(3)(2),
22 Dunham's opposition was due two weeks before that date. He has, however, filed nothing.

23 On January 23, the date by which AHMSI's reply brief would have been due (had Dunham
24 filed an opposition), AHMSI filed a notice pointing out that Dunham hadn't filed any
25 opposition, and requesting dismissal with prejudice. The hearing on calendar for Monday,
26 January 30 is therefore **VACATED** and no appearances will be required in this matter on that
27 date.

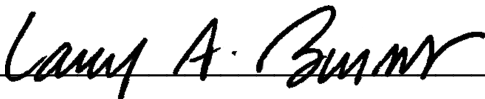
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1 Under Civil Local Rule 7.1(f)(3)(c), Dunham's failure to file the required opposition can
2 constitute consent to the motion's being granted. The Court so construes Dunham's failure
3 to oppose the motion, and the complaint is **DISMISSED WITHOUT PREJUDICE**.

4 AHMSI's notice of non-opposition pointed out Dunham had filed an abandoned
5 identical claims in state court before. In view of this, if Dunham seeks to amend his
6 complaint in this action, he must first obtain leave to do so. He may do this by filing an *ex*
7 *parte* application or joint motion, attaching the proposed amended complaint as an exhibit.
8 If he files an *ex parte* application, he must explain why his failure to oppose the first motion
9 should be excused, and why, in view of the motion to dismiss, the amended complaint would
10 not be dismissed. He must do this no later than the close of business on **Monday February**
11 **6, 2012**. If he fails to seek leave to amend within the time permitted, or if his application for
12 leave does not comply with this order, this action will be **DISMISSED WITH PREJUDICE**.

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14 **IT IS SO ORDERED.**

15 DATED: 1-25-12

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17 **HONORABLE LARRY ALAN BURNS**
18 United States District Judge
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